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Before the
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Access Charge Reform)	CC Docket No. <u>96-262</u>
)	
Complete Detariffing for)	
Competitive Access Providers and)	CC Docket No. 97-146
Competitive Local Exchange)	
Carriers)	

REPLY COMMENTS OF SPRINT CORPORATION

In its initial comments, Sprint argued that the most effective way to control the CLEC access bottleneck was for the Commission to set a reasonable ceiling for CLEC access charges. Failing that, mandatory detariffing could be a step in the right direction — by precluding CLECs from attempting to bind IXCs to their unilaterally-established tariffed access charges — but would give undue bargaining leverage to the largest IXCs (*vis-à-vis* smaller IXCs) and to the largest CLECs (*vis-à-vis* smaller CLECs in the same market). For that reason, Sprint urged the Commission not to order mandatory detariffing unless the Commission also requires public disclosure of all CLEC-IXC contracts and vigorously enforces the anti-discrimination provisions of the Act.

Only one commenting party — Ad Hoc Telecommunications Users Committee — gives unqualified support to mandatory detariffing. Even at that, Ad Hoc (at 5) recognizes the "unique marketplace issues" resulting from the LECs' access bottleneck and "views with concern" possible CLEC price gouging. AT&T and Global Crossing fully share Sprint's view that there is a market failure with respect to CLEC access charges. AT&T (at 2) would restrict mandatory detariffing to CLECs whose rates exceed those of the ILEC in the same market, and urges continuation of permissive detariffing

for rates that are less than or equal to the ILEC rates. Global Crossing, which opposes detariffing, agrees with Sprint that the better course is direct Commission regulation of CLEC access charges (at 1-2). Global Crossing (at 7) also expresses concern over the danger of discrimination that could occur under a framework of mandatory detariffing. WorldCom, while supporting mandatory detariffing, nonetheless shares Sprint's view that full public disclosure of all CLEC-IXC contracts is necessary to avoid unjust discrimination by CLECs and proposes that any IXC be allowed to "opt in" to the terms of any contract (at 5).¹ It should be noted that under permissive detariffing, CLECs are free to engage in contracts with particular IXCs, yet may not have an obligation to make the terms of those contracts public. Thus, the CLECs have the same ability now that they would with mandatory detariffing to discriminate against smaller IXCs through their tariffs *vis-à-vis* large IXCs with whom they may enter into contracts. Thus, even if the Commission fails to order mandatory detariffing, it should require CLEC-IXC contracts to be made public.

Predictably, the CLEC industry vigorously opposes mandatory detariffing, citing the difficulties they would have in obtaining agreements with all IXCs and expressing concern over the possibility that larger IXCs could force smaller CLECs to accept rates lower than the CLECs would wish to charge. They also argue that it would be unfair to require mandatory detariffing for CLECs when the ILECs are not subject to such a

¹ WorldCom (at 6) likewise argues that publication of all contracts would protect CLECs against discriminatory treatment by IXCs, explaining that if an IXC agrees to accept the access services of one CLEC in a particular geographic area, a refusal to accept services from another CLEC on similar terms and conditions in that area may constitute a discriminatory practice under the Communications Act. Although Sprint shares WorldCom's concern from a policy perspective — that mandatory detariffing could harm small CLECs *vis-à-vis* larger CLECs in the same market — Sprint disagrees with WorldCom that the conduct of an IXC as the purchaser of a service from another carrier is subject to the provisions of §202 (and, for that matter, §201) of the Communications Act. WorldCom offers no precedent to support its proposition, and Sprint is aware of none, other than the Common Carrier Bureau's novel and unexplained order in *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (CCB, 1999) *aff'd* on other grounds, 15 FCC Rcd 308 (1999).

requirement,² wholly overlooking the critical distinction that ILEC rates are regulated, while those of CLECs, at least at the present time, are not. CLECs want the ability to bind IXCs to rates of their own unilateral choosing, using the tariff mechanism to attempt to force IXCs to become customers, and resist the notion that IXCs should be free not to purchase services from CLECs on such terms.³

The CLECs also pretend there is no problem with the level of their access charges. For example, Allegiance (at 2) and Focal (at 2) claim the Commission has recognized "that CLECs may be justified in setting higher access charges than ILECs..." when that in fact is not the case. To support their statement, both carriers quote identical language,⁴ which they ascribe to two different Commission orders, neither of which contains the quoted language.⁵ The language both carriers quote does appear in ¶244 of the Fifth Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-262 (14 FCC Rcd 14221, 14343 (1999)). What Allegiance and Focal fail to point out is that in the very next sentence of that order, the Commission went on to state (*id.*):

Requiring IXCs to bear these costs, however, may impose unfair burdens on IXC customers that pay rates reflecting these CLEC costs even though the IXC customers may not subscribe to the CLEC.

This burden is a very real problem. As Sprint pointed out in its initial comments (at 2), Sprint estimates that the difference between the tariffed access charges of CLECs

² See, e.g., Joint Comments of e.s.pire, *et al.*, at 8; Allegiance at 8; and Focal at 7.

³ The issue whether IXCs must as a matter of law subscribe to CLEC access service has already been addressed by the parties, and Sprint sees no need to comment further on this issue.

⁴ The quoted language is:

"[w]e acknowledge that CLEC access rates may, in fact, be higher due to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs."

⁵ See Allegiance, n.3 at 2, referring to the 1997 *Access Reform* order (12 FCC Rcd 15982 (1997)) at ¶244, which in fact deals with SS7 signaling; and Focal, n.3 at 2, citing the Commission's 1997 decision in the *Hyperion and Time Warner Petitions for Forbearance*, 12 FCC Rcd 8596 (1997), again citing ¶244 of an Order and Notice of Proposed Rulemaking that together are only 54 paragraphs long.

and the amounts charged by the ILEC serving the same territories is approximately **\$1 billion annually**, at current volume levels, for the long distance industry and its customers.

Nor does Sprint agree with the CLECs who claim that under present Commission policies, "relief for IXCs [by filing §208 complaints] is swift and certain ...".⁶ On the contrary, the Commission shows every evidence of wishing to play an "administrative law shell game"⁷ when confronted with complaints against CLEC access charges. In *Sprint Communications Company LP v. MGC Communications, Inc.*, Sprint complained against the access charges of a CLEC whose rates were as much as 14 times greater than those of the ILECs in whose regions the CLEC operates. Taking at face value the Commission's previous expressions of concern over CLEC access charges that exceed those of the ILEC serving the same market (*see* First Report and Order in CC Docket No. 96-262, 12 FCC Rcd at 16141) and drawing on long-standing Commission precedent that the costs of individual carriers in a competitive market is irrelevant to the reasonableness of their rates, which instead should be based on those of the most efficient carrier, Sprint urged the Commission to find the carrier's rates unlawful and to prescribe what the Commission believed to be just and reasonable rates. Instead, even though the defendant failed to offer any substantive defense of its rates, the Commission interpreted Sprint's complaint as having sought creation of a *per se* rule that any CLEC rate in excess of an ILEC rate is unjust and unreasonable and declined to impose such a rule, holding instead that a carrier-specific review is needed.⁸ One can only conclude from the Commission's treatment of that complaint that the Commission has thus far been unwilling to explicate

⁶ See Joint Comments of e.spire, *et al.* at 8.

⁷ *AT&T v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992), *cert. denied*, 509 U.S. 913 (1993).

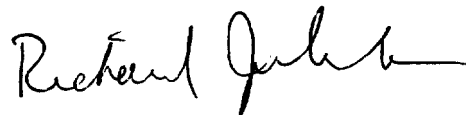
⁸ *Sprint Communications Company LP v. MGC Communications, Inc.*, FCC 00-206, released June 9, 2000, review pending, CADC No. 00-1260.

its criteria for judging the reasonableness of a CLEC's rates and that relief for IXCs will neither be "swift" nor "certain."

What should be clear to the Commission after reviewing the parties' comments is that, regardless of the pluses and minuses associated with mandatory detariffing, a continuation of the status quo is untenable as a matter of sound public policy. Despite all the infirmities regarding mandatory detariffing pointed out in the comments of other parties, Sprint still reluctantly endorses such action as a stopgap measure to deal with CLEC access charges if — but only if — such action is accompanied by a requirement for a full public disclosure of all IXC-CLEC access agreements, giving each IXC the right to opt in, as WorldCom suggests, to any agreement reached by that CLEC with any other IXC. Nonetheless, Sprint adheres to its view that the Commission would far better serve the public interest by setting what it believes to be a reasonable ceiling on CLEC access charges.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "Richard Juhnke", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Corporation in CC Docket Nos. 96-262 and 97-146 was sent by United States first-class mail, postage prepaid, or Hand Delivery on this 24th day of July, 2000 to the parties listed below.


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